

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

AUSTIN KLEINHANS,
Plaintiff,

Case No. 1:21-cv-070
Barrett, J.
Litkovitz, M.J.

vs.


GREATER CINCINNATI
BEHAVIORAL HEALTH SERVICES,
Defendant.

**REPORT AND
RECOMMENDATION**

Plaintiff filed the original complaint in this action in January 2021, alleging claims under the Fair Labor Standards Act and putative class-action claims under the Ohio Minimum Fair Wage Standards Act. (Doc. 1). On April 2, 2021, defendant Greater Cincinnati Behavioral Health Services (GCBHS) filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim for relief. (Doc. 8). GCBHS argued that plaintiff's claims lacked factual support. (*Id.*). Plaintiff filed an amended complaint against GCBHS on April 23, 2021 (Doc. 9), and GCBHS filed an answer to the amended complaint on May 7, 2021 (Doc. 10). Plaintiff's amended complaint "supersedes the original complaint and is the 'legally operative complaint' in this matter." *Scuba v. Wilkinson*, No. 1:06-cv-160, 2006 WL 2794939, at *2 (S.D. Ohio Sept. 27, 2006) (citing *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000)). Defendant GCBHS's motion to dismiss the original complaint is therefore moot.

Accordingly, it is **RECOMMENDED** that defendant GCBHS's motion to dismiss the original complaint (Doc. 8) be **DENIED** as **MOOT**.

Date: 5/26/2021


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).